

REMARKS

The Office Communication dated November 30, 2009, has been fully considered. The present Response is intended to be a complete response thereto and to supplement the Response filed July 27, 2009.

Applicant gratefully acknowledges the courtesy of a telephonic interview on August 13, 2009, where the Examiner, Primary Examiner David Naff, and Applicant's representative, Minh-Quan K. Pham, discussed the claims and Borody. The Examiner is of the opinion that Borody discloses lavage as a preferred step and as such that step may be omitted. No agreement was reached during the interview.

THE CLAIMS ARE NOT ANTICIPATED OR OBVIOUS

The arguments presented in the Response of August 27, 2009, are incorporated herein. Applicant respectfully supplements those arguments with the following:

In the Interview Summary mailed August 17, 2009, the Examiner alleges that the lavage step of Borody is a preferred step and can be eliminated. First, Applicant respectfully submits that the Examiner's allegation is not in accordance with Borody. That reference does not disclose lavage as a preferred step, but an essential step of the invention. In column 5, lines 34-39, Borody discloses that

In the practice of the invention the patients [*sic*] existing enteric flora is removed by gastrointestinal lavage effected by ingestion of about 3 liters of a balanced salt solution with polyethylene glycol. Lavage is continued until the removal of the existing flora is as near complete as possible.

This passage clearly points out that gastrointestinal lavage is essential by clearly emphasizing that lavage is used "[i]n the practice of the invention," not just a preferred practice of the

invention. Further, lavage is not just a preferred method of many disclosed by Borody. No other method for “substantially complete removal of existing enteric flora” is disclosed by Borody.

Second, Applicant respectfully submits that Borody discloses an antibiotic as a supplement to the gastrointestinal lavage and not a substitute thereof. In column 5, lines 55-60, Borody discloses that “a preparatory course of appropriate antibiotics may be used.” This preparatory course is used prior to the lavage as a supplement and is not used as a replacement of the lavage step. Additionally, the permissive language “may be use” clearly shows that the antibiotic preparatory course is optional. Thus, Borody discloses the antibiotic preparatory course as optional, with the lavage step as being essential to his invention. As such, one of ordinary skill in the art would not modify the teaching to Borody to substitute an optional, preparatory course of antibiotic for the essential lavage step.

In the Interview Summary, the Examiner also alleges that “it would have been obvious to omit the lavage step if one of skill in the art were willing to accept the function of antibiotic to remove the enteric pathogens.” Applicant respectfully submits that the Examiner’s allegation that the use of antibiotics alone is sufficient to practice the method of Borody is based on the false understanding that Borody teaches removal of just the enteric pathogens. Borody does NOT teach just removing “the enteric pathogen.” Borody’s method is drawn to “substantially complete removal of existing enteric flora.” Column 3, lines 61-63. The enteric flora contains both pathogenic and non-pathogenic, beneficial microorganisms. Borody’s method removes the entire enteric flora (pathogens and non-pathogens), not just the pathogens. Further, as noted above, Borody uses antibiotics only as a supplement to lavage. This clearly suggests that antibiotics, by themselves, are not sufficient for “substantially complete removal of existing

enteric flora.” If so, why would Borody uses lavage as a follow up to the preparatory course of antibiotics?

Therefore, the reasons noted above further supplement Applicant’s Response of August 27, 2009, and emphasize that the present invention is not obvious over Borody.

CONCLUSION

Applicant has responded to the Office Communication mailed November 30, 2009. All pending claims are now believed to be allowable and favorable action is respectfully requested.

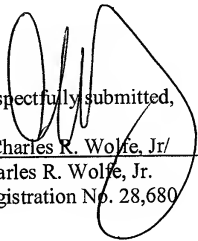
In the event that there are any questions relating to this Response or to the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (111828.0113). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this response, applicant hereby petitions under 37 C.F.R. 1.136(a) for an extension of time.

Any fees due are authorized above.

Date: December 11, 2009

Respectfully submitted,


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